



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

RECENT CASES

CONTRACTS—WHAT LAW GOVERNS—CAPACITY TO CONTRACT.—HAMMERSTEIN v. SYLVA, 124 N. Y. SUP. 535.—*Held*, The capacity of an operatic singer, domiciled in the United States, to contract for services in the United States, is governed by the laws of that country, where the contract was made in France.

The general rule is that the law governing the capacity to contract is the law of the place where the contract is made. *Gates v. Bingham*, 49 Conn., 275; *Appeal of Huey*, 1 Grant Cas., 51; *U. S. v. Garlinghouse*, Fed. Cas., No. 15,189; 4 Ben., 194; *Story's Conflict of Laws*, sec. 103. The law governing the validity of a contract, validity including capacity, is that of the place where made. *Scudder v. Union Nat. Bank*, 91 U. S., 406; *Baxter Nat. Bank v. Talbot*, 154 Mass., 213; *Union Nat. Bank v. Chapman*, 169 N. Y., 538. But, where the intent is that the performance shall be in a state or country other than the place of contracting, the validity, obligation and effect is determined by the law of the place of performance. *Butler v. Myer*, 17 Ind., 77; *Pittsburg, Cincinnati, Chicago, and St. Louis R. R. Co. v. Sheppard*, 56 Ohio, 68, *Contra*. Even where the contract is made with a view to performance elsewhere, it has been held that the capacity to contract is governed by the law of the place where made. *Campbell v. Crampton*, 2 Fed., 417. In England, the rule is that "the personal capacity to enter into any contract is to be decided by the domicile"; *Guefratte v. Young*, 4 DeG. & Sen., 217. But, in America, the English rule has been held in a very few cases; then the domicile and place of making contract were the same. *Matthews v. Murchison*, 17 Fed., 760; *Augusta Ins. & Banking Co. v. Morton*, 3 La. Ann., 417.

DAMAGES—LIQUIDATED DAMAGES OR PENALTY—PURPOSE OF AGREEMENT.—FLORENCE WAGON WORKS v. SALMON, 68 S. E., 866 (GA.).—*Held*, that where a designated sum is inserted into a contract for the purpose of deterring one or both of the parties from breaching it, it is a penalty; but where it is inserted as the result of a *bona fide* effort of the parties to liquidate in advance and agree upon the sum that should represent the damages which would be actually sustained in the event of a breach, it will be upheld and enforced (unless unconscionable or oppressive), especially in cases where the damages cannot be readily estimated according to some legal standard or measure of damage.

As to whether a sum agreed to be paid as damages for the violation of an agreement shall be considered as liquidated damages or only as a penalty is held to depend upon the meaning and intent of the parties as gathered from the full view of the provisions of the contract, the terms used to express the intent, and the peculiar circumstances of the subject matter of the agreement. *Hosmer v. True*, 19 Barb. (N. Y.), 106; *Marsh v. Allabaugh*, 103 Pa. St., 335; also in determining whether an amount named in the contract is to be taken as penalty or liquidated damages, courts are influenced largely by the reasonableness of the transaction and